International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Armenia under article 29, paragraph 1, of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Armenia under article 29, paragraph 1, of the Convention (CED/C/ARM/1) at its 122nd and 123rd meetings (CED/C/SR.122 and 123), held on 3 and 4 February 2015. At its 134th meeting, held on 11 February 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Armenia under article 29, paragraph 1, of the Convention (CED/C/ARM/1 and Corr. 1) and the information contained in the report. The Committee appreciates the constructive dialogue held with the delegation of the State party on the measures taken to implement the provisions of the Convention. The Committee also thanks the State party for its written replies (CED/C/ARM/Q/1/Add.1) to the list of issues (CED/C/ARM/Q/1), as supplemented by statements by the delegation.

B. Positive aspects

3. The Committee commends the State party on having ratified most of the United Nations human rights treaties and their optional protocols.

4. The Committee welcomes the measures adopted by the State party regarding matters related to the Convention, including the following:

(a) The adoption of the 2012-2016 Strategic Programme for Legal and Judicial Reforms, on 30 June 2012;

(b) The adoption of the Action Plan for the Protection of Human Rights, on 27 February 2014;

(c) The establishment of the Police Disciplinary Commission.

5. The Committee notes that, under article 5 of the Law on International Treaties of Armenia, the international conventions on human rights that Armenia has acceded to or ratified, including the Convention, have direct effect in the State Party and that, under article 6 of the Constitution, in the event of conflicting legislation, the provisions of the

* Adopted by the Committee at its eighth session (2–13 February 2015).

international conventions prevail. The Committee also notes that the provisions of the Convention can be invoked before the domestic courts.

C. Principal subjects of concern and recommendations

6. The Committee considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearance was not in full compliance with the obligations under the Convention. While noting that the State party has begun a legislative process aimed at full implementation of the Convention, the Committee recommends that the State party take account of its recommendations, which have been made in a constructive and cooperative spirit, with the aim of ensuring that the legal framework and how it is implemented in the State party are aligned with the rights and obligations established in the Convention. In this respect, the Committee would encourage the State party to take advantage of the current discussions on legislative reforms to ensure that its legislation fully complies with the Convention.

General information

Individual and inter-State communications

7. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, but that it is considering the possibility of doing so (arts. 31 and 32).

8. **The Committee encourages the State party to recognize without delay the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, with a view to strengthening the system of protection against enforced disappearance provided for in the Convention, and give effect to the right recognized in article 18 of the Constitution of Armenia.**

National human rights institution

9. The Committee notes with satisfaction that the Office of the Human Rights Defender of Armenia carries out the double mandate of ombudsman and national preventive mechanism under the Optional Protocol to the Convention against Torture and that it is planned to establish a military ombudsman. Nevertheless, the Committee is concerned at the lack of the resources necessary for the Office to discharge its mandate effectively and independently in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

10. **The Committee recommends that the State party take the necessary steps to ensure that the Office of the Human Rights Defender is supplied with the necessary financial, material and staffing resources to carry out its mandate effectively and independently, in accordance with the Paris Principles.**

Definition of the offence of enforced disappearance (arts. 1–7)

The offence of enforced disappearance

11. While noting that a number of articles in the Criminal Code of Armenia, including articles 131, 133, 308, 309, 348 and 392, contain elements that may be related to enforced disappearance, the Committee remains concerned that these articles are not sufficient to adequately encompass all the constituent elements of enforced disappearance, as defined in

article 2 of the Convention, and thus to comply with the obligation arising from article 4. The Committee also regrets that enforced disappearance is not defined as a separate crime in the national legislation. The Committee's view is that a definition of enforced disappearance as a separate crime, which was in accordance with the definition in article 2 and distinguished it from other offences, would enable the State party to comply with the obligation under article 4, which is closely related to other treaty obligations concerning legislation, such as those in articles 6, 7 and 8. In the Committee's view, such a definition would also make it possible to correctly encompass the many legal rights affected by enforced disappearances. The Committee regrets the lack of information on how article 47 of the Criminal Code of Armenia is in line with article 6 of the Convention. The Committee notes with interest the information provided by the State party on the revision of the Criminal Code, including the amendment of article 392 relating to the statute of limitations (arts. 2, 4, 6, 7 and 8).

12. **The Committee recommends that the State party ensure that the revision of the Criminal Code is fully aligned with the obligations contained in the Convention by incorporating all those changes that are needed to comply with the provisions of the Convention. In particular, the State party should define enforced disappearance as a separate crime in line with the definition in article 2 of the Convention and ensure that that crime is punishable by appropriate penalties which take into account its extreme seriousness. The Committee invites the State party, when criminalizing enforced disappearance as an autonomous offence, to consider establishing the specific mitigating and aggravating circumstances provided for in article 7, paragraph 2, of the Convention. It also recommends that the State party ensure that mitigating circumstances will in no case lead to a lack of appropriate punishment.**

13. **The Committee wishes to emphasize the continuous nature of the crime of enforced disappearance, in accordance with the principles of the Convention, to recall the strict terms laid down in the article governing the statute of limitations for this crime, and to emphasize its imprescriptible character when it constitutes a crime against humanity in accordance with article 5 of the Convention.**

Criminal responsibility and judicial cooperation in matters of enforced disappearance (arts. 8–15)

Investigation of enforced disappearance

14. The Committee takes note of the information provided by the State party on the establishment of the Special Investigation Service that conducts preliminary investigations of criminal cases relating to the complicity of State officials. It is nevertheless concerned that the suspension from duty of officials suspected of having committed an enforced disappearance is not always guaranteed in criminal investigations (art. 12).

15. **The State party should take the necessary steps to ensure that all cases of alleged enforced disappearance are investigated without delay, even in cases in which no formal complaints have been brought, and that those responsible are punished in accordance with the gravity of their acts. In order to strengthen the existing legal framework and ensure that, in accordance with article 12, paragraph 4, of the Convention, all acts that would hinder the progress of investigations are prevented and punished, and, in particular, to ensure that all persons suspected of having committed an offence of enforced disappearance are not in a position to directly or indirectly influence the progress of an investigation—either through their own actions or through those of others—the Committee recommends that the State party adopt legal provisions that expressly establish: (a) the suspension, for the duration of the investigation, of any officials suspected of having committed an offence of enforced disappearance; and (b) a mechanism that ensures that law enforcement or security**

forces, whether civilian or military, whose members are suspected of having committed an offence of enforced disappearance do not take part in the investigation.

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

16. The Committee notes that article 16 (3) of the Criminal Code prohibits refoulement, but does not expressly refer to enforced disappearance among the factors that could put an alien who is returned in serious danger. The Committee expresses its concern about the lack of information on (a) safeguards against enforced disappearance in extradition and expulsion and (b) any diplomatic assurances accepted by Armenia on its return of applicants for asylum to neighbouring countries. Furthermore, the Committee shares the concerns of the Human Rights Committee about the situation of asylum seekers who are prosecuted and sentenced under article 329 of the Criminal Code solely on account of their illegal entry (CCPR/C/ARM/CO/2, para. 17) (art. 16).

17. **The Committee recommends that the State party consider explicitly incorporating into its domestic legislation a prohibition on carrying out an expulsion, refoulement, rendition or extradition when there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. The Committee also urges the State party to ensure that the competent authorities strictly comply with the applicable procedures for extradition, refoulement or expulsion and ensure, in particular, that an individual examination is carried out in each case to determine whether there are substantial grounds for believing that the person might be in danger of being subjected to enforced disappearance. The Committee calls on the State party to refrain from seeking and accepting diplomatic assurances from a State where there are substantial grounds for believing that a person would be at risk of being subjected to enforced disappearance.**

Register of persons deprived of their liberty

18. The Committee takes note of article 29 of the Law on custody of arrestees and remand prisoners regarding the registers of persons deprived of their liberty. It nevertheless echoes the concerns of the Committee against Torture (CAT/C/ARM/CO/3, para. 11) that, in practice, police officials do not keep accurate records of all periods of deprivation of liberty (arts. 17 and 22).

19. **The State party should take the necessary steps to ensure that:**

(a) Information on all persons deprived of their liberty, without exception, is entered in registers and/or records in accordance with standard protocols and that the information contained therein includes, as a minimum, that required under article 17, paragraph 3, of the Convention;

(b) All registers and/or records of persons deprived of their liberty are accurately and promptly completed and kept up to date;

(c) All registers and/or records of persons deprived of their liberty are regularly checked and that, in the event of irregularities, the officials responsible are sanctioned.

National preventive mechanism

20. The Committee notes with appreciation that the State party designated the Human Rights Defender of Armenia as the national preventive mechanism following its ratification of the Optional Protocol to the Convention against Torture in 2006. It is also noted that the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment

or Punishment made a number of important recommendations following its national preventive mechanism advisory visit to Armenia in 2013 (see CAT/OP/ARM/1). Nevertheless, the Committee is concerned about the insufficient legislative basis for the national preventive mechanism, as well as the inadequate budget for ensuring institutionalized participation of civil society in its activities. The Committee takes note of the information provided by the delegation about the ongoing discussion concerning the amendment of the Law on the Human Rights Defender (art. 17).

21. **The State party should ensure that the Office of the Human Rights Defender of Armenia has sufficient financial, human and technical resources to perform effectively its role as the national protective mechanism, and that all relevant government authorities allow and enable the Office to execute its mandate in full compliance with the provisions of the Optional Protocol to the Convention against Torture.**

Training on the Convention

22. While noting the human rights training provided to law enforcement personnel and prosecutors, the Committee regrets the lack of information about training on the provisions of the Convention for law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty (art. 23).

23. **The Committee recommends that the State party take the necessary measures to ensure that all military and civilian law enforcement personnel, medical personnel, public officials and any other persons who may be involved in the custody or treatment of persons deprived of their liberty—including judges, prosecutors and other officials responsible for the administration of justice—receive suitable information on a regular basis concerning the provisions of the Convention, in accordance with article 23.**

Measures of reparation and measures for the protection of children from enforced disappearance (arts. 24 and 25)

Right to receive reparation and prompt, fair and adequate compensation

24. The Committee remains concerned at the lack of explanation as to how the discretionary power to declare a person a victim and to choose a legal successor of the victim under articles 58 and 80 of the Criminal Code and other applicable legislation in the State party is in line with article 24 of the Convention. The Committee regrets the restrictive definition of victims as contained in the legislation of the State party (art. 24).

25. **The Committee recommends that the State party should take the necessary measures to ensure that the definition of "victim" in the Criminal Code and other applicable legislation in Armenia is fully in line with article 24, paragraph 1, of the Convention.**

26. While noting certain legal provisions relating to the rights of victims under article 59 of the Criminal Code and the Law on Social Assistance of Armenia, the Committee is concerned that no provision is made in the State party's legislation for a comprehensive system of reparation that fully meets the requirements of article 24, paragraphs 4 and 5, of the Convention and is applicable to all cases of enforced disappearance. Furthermore, the Committee is concerned that the right of victims to know the truth regarding the fate of the disappeared person is not explicitly guaranteed (art. 24).

27. **The Committee recommends that the State party adopt the necessary legislative or other measures:**

(a) To guarantee the right of all persons who have suffered direct harm as a result of an enforced disappearance to obtain prompt, fair and adequate compensation and all the other forms of reparation, including restitution, rehabilitation, satisfaction, as well as the restoration of their dignity and reputation, and guarantees of non-repetition, without the need to prove the death of the disappeared person, in accordance with article 24, paragraphs 4 and 5, of the Convention;

(b) To include in the legislation an explicit provision for the right of victims to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person.

Legislation concerning the removal of children

28. While noting that chapter 20 of the Criminal Code envisages liability for crimes against the interests of the family and the child, the Committee regrets that the State party's criminal laws do not include provisions that specifically penalize conduct relating to the removal of children, as referred to in article 25, paragraph 1, of the Convention (art. 25).

29. **The Committee recommends that the State party adopt the necessary legislative measures to make the actions described in article 25, paragraph 1, of the Convention specific offences, and for such actions establish penalties that should be commensurate with their extreme gravity.**

D. Dissemination and follow-up

30. The Committee wishes to recall the obligations undertaken by States upon their ratification of the Convention and urges the State party to ensure that all the measures that it adopts—irrespective of their nature or the authority from which they emanate—are in full accordance with the obligations that it assumed upon its ratification of the Convention and with other relevant international instruments. In particular, the Committee urges the State party to ensure that effective investigations are conducted into all enforced disappearances and that the rights of victims as set forth in the Convention are fully upheld.

31. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and complying with the obligations set out in the Convention.

32. The State party is encouraged to ensure the wide dissemination of the Convention, the report that it has submitted under article 29, paragraph 1, of the Convention, its written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party, and the general public. The Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.

33. In accordance with the Committee's rules of procedure, by 13 February 2016 at the latest, the State party should provide relevant information on the action taken in response to the recommendations made by the Committee in paragraphs 12, 19 and 27 above.

34. Under article 29, paragraph 4, of the Convention, the Committee also requests the State party to submit specific, up-to-date information by 13 February 2021 on the action taken in response to all its recommendations, together with any other new information on the fulfilment of the obligations under the Convention. The document containing this information should be prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.

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